Ketua Pengarah Pertubuhan Keselamatan Sosial v Vadivelan a/l Sandara Saigara

HIGH COURT (IPOH) — CIVIL APPEAL NO 16–10 OF 2003
VT SINGHAM J
6 AUGUST 2008

Labour Law — Provident fund — Social security fund — Claim for disablement benefit — Substantive question of law on interpretation of s 24(1) of the Employees Social Security Act 1969 — Whether accident 'arise out of and in the course of employment'

Statutory Interpretation — Construction of statutes — Purposive approach — Object and purpose of the Employees Social Security Act 1969 — Circumstances of case — Whether Act to be interpreted liberally or restrictively — Whether unfair to reject claim for disablement benefit at a time when monetary assistance or benefit is required by insured victim — Employees Social Security Act 1969 s 24

The respondent who was employed by his father, Sandara Saigara ('the employer'), to work as a rubber tapper from 7.30 in the morning until 2 in the afternoon and as an oil palm harvester from 3 in the afternoon till 7.30 at night was at all material times insured under the Employees Social Security Act 1969 ('the Act'). On 8 June 1999, the respondent who had started work as usual at 7.30 in the morning obtained permission from his employer at about 6.15pm to leave early to have his meal as he was hungry. On his way to have his meal, the respondent who was riding a motorcycle, met with an accident and suffered personal injuries. He thereafter claimed for disablement benefit under the Act for the injuries he had suffered as a result of the accident. This claim was rejected by the appellant on the grounds that the accident did not 'arise out of and in the course of employment' as required under s 24(1) and (2) of the Act, when the respondent turned right to a restaurant to have his meal instead of proceeding straight to his house from his place of work. The respondent who was dissatisfied with the appellant's decision filed an application to the Employees' Social Security Appellate Board ('the board') pursuant to reg 3(1) of the Employees' Social Security (Social Security Appellate Board Procedure) Regulations 1976 ('the Regulations'). The chairman of the board allowed the respondent's application and held that the respondent was entitled to a claim for disablement benefit because when the respondent turned right to proceed to

A the restaurant he was on his journey from his place of work to the restaurant with the knowledge and permission of the employer and thus there was no conflict with s 24(1)(c) of the Act. The appellant who was dissatisfied with the decision of the board appealed to the High Court. This appeal to the High Court under reg 17(1) of the Regulations involved a substantial B question of law, that is, the interpretation to be given to s 24(1) of the Act. The appellant submitted that the respondent's claim was excluded by s 24(2) of the Act and that the chairman of the board had erred in law when she allowed the claim because there was a material contradiction in the version given by the respondent in his police report and his statement to the C appellant's officer because in the police report he had stated that he was on his way to have food after obtaining permission from the employer to leave early but in his testimony before the board he had stated that he left early to have his food and had intended to return to work. It was therefore submitted that the respondent's testimony before the board was an afterthought that D should not be accepted. As such the appellant submitted that when the respondent turned right to the restaurant for a meal instead of proceeding straight home there was a deviation along his journey to return home and the accident did not 'arise out of and in the course of his employment' and that the respondent's claim was therefore excluded by s 24(2) of the Act. The E respondent however submitted that there was no deviation as he had left early from his place of work after having obtained permission from his employer to have a meal and that he intended to return to his place of work after the meal. In addition, the respondent's evidence that he was to return after his meal to collect oil palm fruits before returning home was supported by both F his employer and a co-worker. As such the respondent contended that the accident arose out of and in the course of his employment as provided under s 24(1) of the Act.

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Held, dismissing the appeal with costs:

(1) The object and purpose of the legislation have to be considered closely before any restrictive or rigid interpretation is given to s 24(1) of the Act. This social piece of legislation is directly intended to secure the H interest and welfare of employees of the industries, factories and other establishments. In fact both the respondent and his employer contributed on a monthly basis to the Social Security Fund which was managed by the appellant with a view that this fund would provide monetary assistance or benefit under the Act to those insured under the I fund or their dependants in the event of any mishap arising out of and in the course of their employment, as in the instant appeal. Under the circumstances it is unfair to find excuses or to create uncertainties to reject the claim for disablement benefit at a time when such monetary assistance or benefit is desperately required by the insured victim.

Therefore, it is not unreasonable and is a sound rule of construction that the social legislation should be interpreted liberally and be given a purposive interpretation and in such a manner as to render the rights and benefits available under the Act to be effective and to provide meaningful social security to the insured or their dependants. Thus the purpose and object of this legislation is to provide monetary benefits to an insured person who had become disabled and not to deny him of his claim (see paras 14–16 & 30).

(2) In order to satisfy s 24 of the Act the accident must arise out of and in the course of his employment. The words 'in the course of his employment' must necessarily mean 'in the course of his work' which the workman is employed to do and includes some risks incidental to the duty of the service. Thus an injury received within reasonable time and space, for instance in cases where the workman or insured meets with an accident while in the act of eating, drinking or even smoking is to be regarded as an employment injury ie an injury that was received in the course of his employment. In the instant appeal the insured left his place of work at about 6.15pm and within a short period of time ie 6.30pm met with an accident within 3km from his place of work when he went to have his meal with the prior permission of his employer. In addition the respondent left his work place to have his meal and return to work. This version of the facts was supported by the employer and a co-worker (see paras 21 & 27).

(3) The appellant's submission of a contradiction between the respondent's version of events in his police report and his testimony before the board must be regarded as one of fact and not as a substantial question of law for the appeal to be brought to the High Court. The question of the respondent having omitted to give a more detailed account to the appellant's officer was a question of fact and not law as it merely relates to the weight to be given to the evidence of the respondent for omission. In any event the respondent had explained the alleged omission and his explanation had been supported by his employer. Although the employer in the instant appeal was the respondent's father this did not necessarily mean that the employer's evidence should not be accepted on the ground that it is more likely that he would support his son. Moreover, there was no challenge made during the cross-examination at the board that both the employer and the respondent had fabricated their evidence by testifying that the respondent had intended to return to work after his meal or of any non-disclosure of material facts (see paras 28 & 29).

(4) In the instant appeal the respondent did not leave his place of work to carry out an unauthorised enterprise. The evidence did not demonstrate that there was any breach of the terms of the contract or disobedience

of his employer's instructions. In fact, this was a clear case of the employer having given permission to the respondent, in the presence of a co-worker, to leave early to have his meal and to return to work. Therefore the respondent's disablement benefit under the Act could not be excluded as a deviation when the respondent turned right to have his meal as this would be tantamount to frustrating the purpose and object of this social legislation (see para 34).

[Bahasa Malaysia summary

Responden yang digaji oleh ayahnya, Sandara Saigara ('majikan'), untuk bekerja sebagai penoreh getah dari 7.30 pagi hingga 2 petang dan sebagai pemungut kelapa sawit dari 3 petang hingga 7.30 malam adalah pada kesemua masa material dilindungi di bawah Akta Keselamatan Sosial Pekerja 1969 (' Akta tersebut'). Pada 8 Jun 1999, responden yang telah mula bekerja seperti biasa pada pukul 7.30 pagi memperolehi kebenaran dari majikannya pada lebih kurang pukul 6.15 petang untuk pulang awal untuk makan kerana beliau lapar. Dalam perjalanan ke tempat makan responden yang menunggang motosikal bertembung dengan kemalangan dan mengalami kecederaan diri. Oleh itu dia membuat tuntutan bagi faedah ketidakupayaan di bawah Akta tersebut bagi kecederaan-kecederaan yang dialaminya akibat daripada kemalangan tersebut. Tuntutan ini ditolak oleh perayu atas alasan bahawa kemalangan tersebut tidak 'timbul dari dan dalam perjalanan pekerjaan' seperti yang dikehendaki di bawah s 24(1) dan (2) Akta tersebut, apabila responden membelok ke kanan ke satu restoran untuk makan dan tidak meneruskan ke rumahnya dari tempat kerjanya. Responden yang tidak berpuashati dengan keputusan perayu memfailkan satu permohonan kepada Lembaga Rayuan Keselamatan Sosial Pekerja ('Lembaga') mengikut peraturan 3(1) Peraturan-Peraturan Keselamatan Sosial Pekerja (Prosedur Lembaga Rayuan Keselamatan Sosial) 1976 ('Peraturan-Peraturan tersebut'). Pengerusi lembaga tersebut membenarkan permohonan responden dan memutuskan bahawa responden berhak terhadap tuntutan faedah ketidakupayaan kerana semasa responden membelok ke kanan menuju ke restoran dia sedang dalam perjalanan dari tempat kerja ke restoran dengan pengetahuan dan kebenaran majikan dan oleh itu tiada konflik dengan s 24(1)(c) Akta tersebut. Perayu yang tidak berpuashati dengan keputusan lembaga tersebut merayu ke Mahkamah Tinggi. Rayuan ini di Mahkamah Tinggi di bawah peraturan 17(1) Peraturan-Peraturan tersebut melibatkan sejumlah persoalan undang-undang, iaitu, tafsiran yang diberikan kepada s 24(1) Akta tersebut. Perayu mengemukakan bahawa tuntutan responden adalah dikecualikan oleh s 24(2) Akta tersebut dan bahawa pengerusi lembaga tersebut telah terkhilaf dari segi undang-undang apabila beliau membenarkan tuntutan tersebut kerana terdapat percanggahan yang material dalam versi yang diberikan oleh responden dalam laporan polisnya dan

kenyataannya kepada pegawai perayu kerana dalam laporan polisnya dia telah menyatakan bahawa dia dalam perjalanan untuk makan setelah mendapat kebenaran daripada majikan untuk pulang awal tetapi dalam keterangannya di hadapan lembaga, dia menyatakan bahawa dia pulang awal untuk makan dan berniat untuk kembali bekerja. Oleh itu dihujahkan bahawa testimoni responden di hadapan lembaga adalah satu fikir semula yang tidak harus diterima. Perayu oleh itu menghujahkan bahawa apabila responden membelok kanan ke restoran untuk makan dan bukan meneruskan perjalanan pulang ke rumah, terdapat penyimpangan dalam perjalanannya untuk balik ke rumah dan kemalangan tersebut tidak 'timbul dari dan dalam perjalanan pekerjaannya' dan tuntutan responden oleh itu dikecualikan dari s 24(2) Akta tersebut. Responden walau bagaimanapun menghujah bahawa tidak terdapat penyimpangan memandangkan dia telah pulang awal dari tempat kerja setelah mendapat kebenaran daripada majikannya untuk makan dan dia berniat untuk pulang ke tempat kerja setelah selesai makan. Tambahan lagi, keterangan responden yang dia akan pulang bekerja setelah makan untuk memungut buah kelapa sawit sebelum pulang ke rumah disokong oleh kedua-dua majikan dan rakan sekerja. Oleh itu responden berhujah bahawa kemalangan tersebut timbul dari dan dalam perjalanan pekerjaan seperti yang diperuntukkan oleh s 24(1) Akta tersebut.

Diputuskan, menolak rayuan dengan kos:

(1) Objek dan tujuan perundangan mesti dipertimbangkan dengan teliti sebelum apa-apa terjemahan sekatan atau tegar diberikan kepada s 24(1) Akta tersebut. Perundangan sosial ini adalah secara langsung bertujuan untuk menjaga kepentingan dan kebajikan pekerja-pekerja industri, kilang dan institusi-institusi lain. Malahan kedua-dua responden dan majikannya menyumbang setiap bulan kepada Tabung Keselamatan Sosial yang diurus oleh perayu dengan pandangan bahawa tabung ini akan memberikan pertolongan kewangan atau faedah di bawah Akta tersebut kepada mereka yang dilindungi di bawah tabung tersebut atau tanggungannya sekiranya berlaku kemalangan yang timbul dari dan dalam perjalanan pekerjaan mereka, seperti dalam rayuan ini. Dalam hal ini adalah tidak adil mencari alasan-alasan atau membuat ketidakpastian untuk menolak tuntuan tersebut bagi faedah ketidakupayaan pada ketika bantuan atau faedah kewangan seperti itu adalah sangat diperlukan oleh mangsa yang dilindungi. Oleh itu, ianya adalah munasabah dan satu peraturan pentafsiran yang betul bahawa undang-undang sosial harus ditafsir secara liberal dan diberikan pentafsiran yang bermaksud dan dalam cara yang tertentu yang membolehkan hak-hak dan faedah yang terdapat di bawah Akta tersebut menjadi efektif dan memperuntukkan keselamatan sosial yang bermakna kepada mereka yang dilindungi atau tanggungan mereka.

Dengan itu tujuan dan objek perundangan ini adalah untuk memberikan faedah-faedah kewangan kepada orang yang dilindungi yang telah menjadi cacat dan bukan untuk menafikan tuntutannya (lihat perenggan 14–16 & 30).

(2) Untuk memenuhi s 24 Akta tersebut kemalangan tersebut mesti timbul dari dan dalam perjalanan pekerjaan beliau. Perkataan-perkataan 'dalam perjalanan pekerjaannya' mesti bermaksud 'dalam perjalanan pekerjaan beliau' yang mana pekerja tersebut digaji untuk membuat dan termasuk risiko-risiko berkaitan dengan tugas perkhidmatan tersebut. Oleh itu, kecederaan yang dialami dalam masa dan ruang yang munasabah, contohnya di mana pekerja atau orang yang dilindungi bertembung dengan kemalangan semasa makan, minum mahu pun merokok harus dianggap sebagai kecederaan pekerjaan iaitu kecederaan yang dialami dalam perjalanan pekerjaan. Dalam rayuan ini orang yang dilindungi meninggalkan tempat kerjanya lebih kurang pukul 6.15 petang dan dalam tempoh yang singkat iaitu 6.30 petang bertembung dengan kemalangan dalam jarak 3km dari tempat kerjanya apabila dia pergi makan dengan mendapat kebenaran majikannya terlebih dahulu. Selanjutnya, responden meninggalkan tempat kerjanya untuk makan dan kembali bekerja. Versi fakta ini disokong oleh majikan dan rakan sekerjanya (lihat perenggan 21 & 27).

(3) Hujahan perayu mengenai percanggahan di antara versi kejadian responden dalam laporan polis dan testimoninya di hadapan lembaga mesti dianggap sebagai satu fakta dan bukan persoalan undang-undang yang substansial bagi rayuan dibawa ke Mahkamah Tinggi. Persoalan di mana responden tidak memberikan keterangan khusus kepada pegawai perayu adalah persoalan fakta dan bukan undang-undang kerana ia hanya berkaitan dengan pertimbangan yang diberikan kepada keterangan responden untuk peninggalan. Dalam sebarang keadaan responden telah menjelaskan peninggalan yang didakwa dan penjelasannya telah disokong oleh majikannya. Walaupun majikan dalam kes ini adalah bapa kepada responden ini tidak seharusnya bermakna keterangan majikan tidak harus diterima berdasarkan bahawa kemungkinan besar beliau menyokong anaknya. Tambahan pula, tidak terdapat cabaran semasa pemeriksaan balas di peringkat lembaga bahawa kedua-dua majikan dan responden telah mereka keterangan mereka dengan memberikan keterangan bahawa responden berniat untuk kembali bekerja selepas makan atau mengenai apa-apa kegagalan mendedahkan fakta-fakta utama (lihat perenggan 28 & 29).

(4) Dalam rayuan ini responden tidak meninggalkan tempat kerjanya untuk membuat sesuatu yang tidak dibenarkan. Keterangan tidak menunjukkan sebarang kemungkiran terma-terma kontrak atau ketidakpatuhan terhadap arahan majikannya. Malahan, ini adalah kes

yang jelas di mana majikan telah memberikan kebenaran kepada responden, di hadapan rakan sekerjanya, untuk meninggalkan kerja lebih awal untuk makan dan kembali bekerja. Oleh itu faedah ketidakupayaan responden di bawah Akta tersebut tidak boleh dikecualikan sebagai penyimpangan apabila responden membelok ke kanan untuk makan kerana ia akan mengecewakan tujuan dan objek perundangan sosial ini (lihat perenggan 34).]

Notes

For cases on provident fund in general, see 8 *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1594–1611.

For cases on purposive approach, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1952–2009.

Cases referred to

Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen and another appeal [1995] 2 MLJ 770, CA (refd)

Assam Railway and Trading Co v Saraswati Devi AIR 1963 Ass 127, CA (refd)

Blovelt v Sawyer [1904] KB 27, CA (refd)

Brice v Edward Lloyd Ltd [1909] 2 KB 804, CA (refd)

Felix v General Dental Council [1960] AC 704, PC (refd)

Ketua Pengarah Pertubuhan Keselamatan Sosial v Jusoh bin Abu Bakar [2002] 7 MLJ 17; [2003] 1 CLJ 283, HC (distd)

Ketua Pengarah Pertubuhan Keselamatan Sosial v Mohd Zaili bin Ali [2004] 1 MLJ 283; [2003] 6 AMR 288, HC (refd)

Ketua Pengarah Pertubuhan Keselamatan Sosial v Rajaparameswari Marimuthu [2004] 4 CLJ 528, HC (distd)

Ketua Pengarah Pertubuhan Keselamatan Sosial v Sathiamorthy a/l Kanason unreported (refd)

Ketua Pengarah Pertubuhan Keselamatan Sosial v Tham Tian Siong [2008] 7 MLJ 854, HC (refd)

Liang Jee Keng v Yik Kee Restaurant Sdn Bhd [1991] 3 MLJ 178, HC (refd)

Mackinnon Mackenzie & Co (P) Ltd v IM Issak [1970] 2 Lab IC 1413 (refd)

MC Mehta v Union of India AIR 1987 SC 1088 (refd)

MC Shantamalar PPA v MD Chandarappa Chetti AIR 1951 Mys 116 (refd)

Pomal Kanji Govindji v Verajall Kar Sandas Purohit AIR 1989 SC 436 (refd)

PEP Davies & Co v Kestorouth AIR 1968 Cal 129 (refd)

R v Monopolies & Mergers Commission, Ex Parte Elders IXL Ltd [1987] 1 All ER 451, QBD (refd)

Reed v Western Railway Co [1908] AC 31, HL (refd)

St Helens Colliery Co Ltd v Hewitson [1924] AC 59, HL (refd)

Trustees, Port Bombay v Yamunabai AIR 1952 Bom 382 (refd)

Weaver Tredegar Iron & Coal Co [1940] 3 All ER 157, HL (refd)

Legislation referred to

Employees Social Security Act 1969 ss 2(6), 23, 24, 24(1), 24(1)(a), 24(1)(b), 24(1)(c), 24(2), 91(2)
Employees' Social Security (General) Regulations 1971 regs 68(1), 71(1) Form 21
Employee's Social Security (Social Security Appellate Board Procedure) Regulations 1976 regs 3(1), 11(g), 17(1), Form A
Workmen's Compensation Act [India]
Workmen's Compensation Act [UK]

K Maniam (Skrine) for the appellant.
Rathi Nair (N R Nair & Associates) for the respondent.

VT Singham J:

[1] This is an appeal by the appellant, the director general of the social security organisation against the decision of the chairman of the employees' social security appellate board ('the board') given on 31 March 2003 which had allowed the respondent to claim for disablement benefit pursuant to s 24(1)(c) of the Employees Social Security Act 1969 (Act 4) (hereinafter referred to as the Act). In this appeal, the appellant and the respondent will be referred to as the SOCSO and the insured respectively.

BRIEF FACTS

[2] The insured at all material times was employed as an oil palm harvester by contractor Sandara Saigara ('the employer'). The insured was at all material time insured under the Act. The insured worked as a rubber tapper from 7.30am till 2pm and from 3pm to 7.30pm, he worked as an oil palm harvester for the employer.

[3] On 8 June 1999, after the insured had completed his work as a rubber tapper in the morning, he continued his job as an oil palm harvester for the employer and started work at about 2.30pm. At or about 6.15pm, he obtained permission from his employer to leave early to have his food as he was hungry. On his way to have his food, he met with an accident at about 6.30pm with a motorcar while he was riding a motorcycle which resulted in injuries and he is entitle to claim for disablement benefit under the Act if it is found that the accident 'arose out of and in the course of his employment'.

[4] The insured was admitted into the hospital for about two weeks and he was in comma. He made a police report of the accident on 11 July 1999 as

required by reg 68(1) of the Employees' Social Security (General) Regulations 1971 ('the 1971 Regulations'). Regulation 68(1) of the 1971 Regulations state:

> 68 Notice of accident
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> (1) Every insured person who sustains personal injury caused by accident arising out of and in the course of his employment in an industry shall give notice of such injury either in writing or orally, as soon as practicable after the happening of the accident:
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> Provided that any such notice required to be given by an insured person may be given by some other person acting on his behalf
>
> Provided further that in the case of an insured person who sustains personal injury other than personal injury of a minor nature caused by an accident referred to under section 24 of the Act, the insured person or any other person shall report such accident to the police;
>
> (2) (Every such notice or in the case of an accident referred to under section 24 of the Act, such notice and police report, if applicable, shall be given to the employer or to any other official under whose supervision the insured person is employed at the time of the accident or any other person designated for the purpose by the employer
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> (3) In this regulation and in regulation 71, the expression 'personal injury of a minor nature' means an injury which does not involve any temporary or permanent disablement benefit.

[5] On 11 October 1999, the employer submitted Form 21 ('accident report') under reg 71(1) of the 1971 Regulations. Regulation 71(1) of the 1971 Regulations state:

> Every employer shall immediately after the receipt of the notice under reg 68 complete, in triplicate, the accident report in Form 21 to which the notice relates, send the original copy of the report, duly completed, to the appropriate office and the second copy to the Insurance Medical practitioner and retain the third copy:
>
> Provided that where no Form 21 is sent by the employer, the Organization may in its discretion accept any other evidence relating to an employment injury;
>
> Provided further that in the case of an insured person who sustains personal injury other than personal injury of a minor nature caused by an accident referred to under section 24 of the Act, the employer shall send the accident report in Form 21 together with the police report in relation to the accident.
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> (2) The report in Form 21 shall be sent:

(i) immediately or otherwise, as speedily as may be practicable under the circumstances, if the injury has resulted in death or if the injury is serious, that it, it is likely to cause death or permanent disablement or loss of a member;

(ii) in any other case within forty eight hours after the receipt of the notice under regulation 68 or the time when the accident come to the notice of the employer or any official under whose supervision the insured person was employed at the time of the accident or any other person designated for the purpose by the employer as the case may be;

(iii) the second copy of the report in Form 21 shall ordinarily be sent through the insured person for producing to the Insurance Medical Practitioner at the time of the first medical examination or treatment;

(iv) where, for any reason, it is not practicable for the employer to send the second copy of the report through the insured person, the employer shall, as interim measure give a letter of identity in such form as may be prescribed by the Organisation and the Insurance Medical Practitioner shall accept provisionally such letter of identity in place of the report in Form 21; the employer shall as soon as practicable thereafter send directly to the Insurance Medical Practitioner the second copy of the report in Form 21 in respect of the accident to which the letter of identity relates.

(3) Deleted.

(4) Every employer shall preserve the third copy of the report in Form 21 for period of five years from the date of its completion.

The insured's employer had given a statement to the SOCSO's officer of the accident on 25 October 1999. The insured also gave his statement to the investigating officer of the SOCSO on 14 January 2000. However, the insured's claim for disablement benefit was rejected by the SOCSO by a letter dated 24 January 2000 addressed to the employer and with a copy to the insured on the ground that the accident did not 'arise out of and in the course of his employment' as there was a deviation when the insured turned right to proceed to have his food instead of proceeding straight to his house from his place of work.

[6] Sections 23, 24(1) and (2) of the Act states:

23 Presumption as to accident arising in the course of employment.

For the purposes of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.

24 Accidents while travelling.

(1) An accident happening to an insured person shall be deemed to arise out of and in the course of his employment if the accident happens while the insured person —

(a) is travelling on a route between his place of residence or stay and his place of work;

(b) is travelling on a journey made for any reason which is directly connected to his employment; or

(c) is travelling on a journey between his place of work and the place where he takes his meal during any authorised recess.

(2) If the accident under subsection (1) occurs during any interruption of or deviation from, the insured person's journey made for any of the purposes stipulated in the same subsection, the accident shall not be deemed to arise out of and in the course of his employment.

[7] As the insured was dissatisfied with the SOCSO's decision which had rejected his claim, he filed an application in Form A dated 21 February 2000 to the board pursuant to reg 3(1) of the Employee's Social Security (Social Security Appellate Board Procedure) Regulations 1976 ('the 1976 Regulations').

Regulation 3(1) of the 1976 Regulations state:

Form of application to Board and fee payable.

(1) An application to the Board to decide any question, dispute, claim or other matter in respect of which the Board may adjudicate under section 84 shall be in Form A.

(2) The application shall be prepared by the applicant and seven copies of it shall be filed at the office of the Chairman of the Board constituted for the State or States or area or areas wherein the subject matter of the application arose: Provided that where the application is made by a person other than the Organisation, such application may be lodged with the Director General of the Organisation who shall then forward the application to the office of the Chairman of the Board concerned.

(3) Any application shall be accompanied by a fee of two ringgit paid by means of stamps on praecipe.

[8] On 31 March 2003, the chairman of the board allowed the application of the insured and held that the claim was payable under s 24(1)(c) of the Act as the accident happened at the time when the insured was on his journey from the place of work to the restaurant with the knowledge and permission of the employer. In allowing the insured's claim, the learned chairman held:

> Keterangan kes telah diujikaji dan jemaah rayuan mendapati banyak keterangan tidak 'reliable' telah dikemukakan. Walau bagaimanapun fakta kes berdasarkan keterangan yang boleh diterima menunjukkan waktu biasa bekerja OB adalah antara pukul 7.30 pagi hingga 7.30 petang. Pada hari kejadian OB tidak menghabiskan kerjanya pada pukul 7.30 petang tetapi pada 6.15 petang ia telah meminta kebenaran majikannya untuk balik awal kerana lapar (lampiran 1 juga dirujuk khususnya para 5). Jemaah rayuan mendapati keterangan menunjukkan majikan OB membenarkan OB balik awal semata-mata untuk membolehkan OB keluar untuk makan kerana ia lapar.
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> Fakta menunjukkan apabila mendapat kebenaran tersebut OB telah terus keluar dan memulakan perjalanannya. Apabila sampai ke persimpangan jalan (peta lakar dirujuk) OB telah membelok ke kanan menghala ke gerai mengikut responden sepatutnya OB membelok ke kiri untuk memulakan perjalanan untuk balik. Semasa dalam perjalanan ke gerai makan OB terlibat dalam kemalangan dan mengalami kecederaan.
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> Isu yang perlu diputuskan oleh jemaah rayuan adalah:
>
> Sama ada OB terlibat dalam kemalangan semasa melencong daripada perjalanan untuk balik ke rumah dari tempat kerja.
>
> Ataupun kemalangan berlaku semasa OB dalam perjalanannya yang sah untuk pergi makan dari tempat kerja ke tempat makan.
>
> Pada pertimbangan jemaah rayuan sekiranya waktu itu sememangnya waktu balik setelah kerja tamat sudah tentu OB tidak perlu lagi mendapatkan kebenaran majikannya untuk pergi makan. Tidak dipertikaikan permintaan tersebut dibuat pada jam 6.15 petang iaitu semasa OB masih dalam tempoh waktu bekerja.
>
> Dalam konteks kes ini adalah jelas majikan melepaskan OB awal bukanlah bertujuan supaya OB balik awal pada hari itu tetapi supaya OB boleh pergi makan kerana ia lapar. Untuk maksud ini adalah tidak wajar diperlukan balik semula ke tempat kerja memandangkan selepas mengambil perjalanan ke gerai makan dan mengambil sedikit masa untuk makan sudah tentu masanya sudah melewati waktu kerja. Atas dasar inilah OB telah dibenarkan untuk balik awal pada hari itu. Memandangkan situasi ini OB membelok ke kanan untuk ke gerai makan adalah menepati kebenaran yang diberi oleh majikan untuk beliau ke gerai makan, dan makan di sana.
>
> Pada pandangan jemaah rayuan dalam kes ini kemalangan yang berlaku adalah semasa OB dalam perjalanan dari tempat kerja ke tempat makan dengan pengetahuan dan kebenaran majikannya. Ianya tidak bercanggah dengan peruntukan s 24(1)(c) dan tidaklah boleh dikatakan bahawa pada masa kejadian OB telah melencong daripada perjalanan yang sepatutnya.

Permohonan OB diluluskan.

In other words, the learned chairman had held that the insured's act of turning right to have his food was not a deviation in this matter and that it did not conflict with s 24(1)(c) of the Act.

[9] The SOCSO being dissatisfied with the decision of the board filed an appeal to the High Court, Ipoh pursuant to reg 17(1) of the Regulations 1976 read together with s 91(2) of the Act.

Regulation 17(1) of the 1976 Regulations state:

Appeal only on question of law.

(1) *There shall be no appeal to the High Court from an order of the Board unless the order involves a substantial question of law.*

(Emphasis added.)

(2) The notice of appeal shall be filed with the Board in Form I within sixty days from the day on which the order was made.

(3) Subject to paragraph (2) of this regulation —

(a) in the case of West Malaysia the provisions of Order XXXIX of the Subordinate Court Rules, 1950 [L.N.339 / 50.], and

(b) in the case of East Malaysia the provisions of the Magistrates' Courts (Civil Appeals) Rules [Sabah G.N.S129 / 51., Swk. G.N. s 33 of 1952.]

shall apply, with such modifications as may be necessary, to an appeal from the order of the Board to the High Court.

Section 91(2) of the Act state:

Appeal.

(1) Save as expressly provided in this section, no appeal shall lie from an order of the appellate boards set up by or under this Act.

(2) *An appeal shall lie to the High Court from an order of an appellate board set up by or under this Act if it involves a substantial question of law.*

(Emphasis added.)

(3) The period of limitation for an appeal under this section shall be sixty days from the date the order is made.

A DECISION

[10] This court finds that this appeal is revolved on the interpretation to be given to s 24(1) of the Act and it must involve a substantive question of law. In other words, if the appeal is purely on the question of fact, this appeal cannot be brought to the High Court. However, the distinction between question of fact and question of law has been productive of several cases and judicial statements. Nevertheless, in order to decide this substantive question of law which revolves around s 24 of the Act, it cannot be disputed that this court may still have to revert to the background facts in order to consider whether those facts and circumstances come within the ambit of s 24 of the Act. Accordingly, in order to secure a finding on the substantive question of law as provided under s 91(2) of the Act and reg 17(1) of the 1976 Regulations, this court has to consider the facts and cannot decide this appeal in isolation or in the abstract alone on the question of law. In another words, this is a case of mixed law and by necessity facts although the expression of the question of mixed law and facts could arguably be described as a hybrid question and not just substantial question of law as stipulated in s 91(2) of the Act and reg 17(1) of the 1976 Regulations (see *Felix v General Dental Council* [1960] AC 704 at p 714).

[11] In the instant appeal, there appears to be two situations in so far as the insured's claim for disablement benefit 'arising out of and in the course of his employment' pursuant to s 24(1) of the Act. The *first situation* is, whether the permission which the insured had obtained from his employer to leave early to have his food as he was hungry meant that he wanted to return home early and that on his journey home, he had turned right to have his food and before he reached the place to have his food, he had met with an accident. The *second situation* is, whether at the time when the insured had obtained permission from his employer to leave early to have his food as he was hungry, he had to return to his place of work after having his food as the employer had informed him earlier that after having his food, he should pick up the oil palm fruits at Block 94-B. In other words, in the *first situation*, whether he had obtained permission to return home early and on his journey home, he could have his food before he proceeded with his journey to his house and when he turned right along his journey, he met with an accident. The *other situation* is, whether he had obtained permission to go out to have his food as he was hungry and thereafter he is to return to his place of work at block 94-B.

Learned counsel for the SOCSO has, inter alia, submitted that the chairman of the board had erred in law when she allowed the claim of the insured because:

(1) She did not consider that there were material contradiction in the version given by the insured. In his police report and followed by his

statement to the SOCSO's officer, he has merely stated that he was on his way to have his food after obtaining permission from his employer to leave early and he did not state that he was to return to continue with his work. Whereas in his testimony before the board, he has stated that he was on his way to have his food and had intended to return to work. Learned counsel has therefore submitted that his testimony before the board was an afterthought and ought not to be accepted.

(2) If his police report and the statement to SOCSO's officer are to be accepted, the insured is not covered by the Act as the accident did not 'arise out of and in the course of his employment' as there was a deviation along his journey to return home when he turned right to have his food at a stall when the accident occurred instead of proceeding straight home. In another words, learned counsel for the SOCSO has submitted that the claim is excluded by sub-s (2) of s 24 of the Act.

On the other hand, learned counsel for the insured has, inter alia, submitted:

(i) The accident occurred while the insured was on his way to have his food as he was hungry after having obtained permission from his employer to leave early from his place of work.

(ii) The insured's evidence is supported by his employer and a co-worker namely, Vadadivelan a/l Subramaniam that at the time when the employer gave permission to the insured to leave early to have his food as he was hungry, he had informed the insured and the co-worker to return to Block 94-B after having their food to collect the oil palm fruits before returning home.

(iii) There was no deviation as the insured was informed to return to his place of work at Block 94-B after having his food. Accordingly, the accident arose out of and in the course of his employment as provided under s 24(1) of the Act.

[12] As this court had at the outset of this decision said that the question before this court revolved around the interpretation of s 24(1) of the Act, the object and purpose of the Legislation have to be considered closely before any restrictive or rigid interpretation is given to the provision of s 24 of the Act.

[13] The Employees' Social Security legislation in this jurisdiction is a social piece of legislation. Among others, it provides security to an employee against loss of earnings due to industrial accident and occupational disease. In other words, this social piece of legislation is directly intended to secure the interest and welfare of employees of the industries, factories and other establishment. The concept of social security should be based 'on ideals of human dignity and social justice' and should be given a flexible approach and a liberal interpretation to s 24 of the Act in order to be consonant with

modern social security concept and should not be unduly restricted in its scope when interpretation is required. In fact, the insured himself is required to contribute together with his employer on a monthly basis to the social security fund which is managed by SOCSO, and this contribution which is made both by the employer and the insured should also be considered as akin to 'savings' or 'investment' towards the fund with the view that SOCSO would provide monetary assistance or benefit under the Act to insureds or their dependants in the event of any mishap 'arising out of and in the course of their employment', as in the instant appeal. Under the circumstances, is it fair to find excuses or to create uncertainties to reject the claim willy nilly for disablement benefit when at the time monetary assistance or benefit is desperately required by the insured-victim or in the case of his death, by his dependants for which this organisation was established ie to provide security if the accident or death 'arises out of and in the course of an insured's employment'. In other words, if there is no 'employment injury' or death, there will not be any payment or benefit under the Act to insureds or their dependants.

[14] However, whether the existing Employees' Social Security legislation is adequate both in its scope and coverage due to the evils, exposure and risks of labour conditions in certain employment sectors and due to other vicissitudes 'hidden by the thick veil of time' is a matter for the legislature to seriously consider and not for this court to opine. It is important to be reminded that this social legislation was introduced to secure social and economic justice to all insured-employees under this Act who are entitled to claim the benefits with the view to provide a quick and inexpensive remedy for the entitlement of such rights for which they are required by the Act to contribute monthly towards the fund in the event of risks of service. In fact, the contribution contemplated by the Act is in the nature of social insurance or security and provides certain contingencies and the contribution received from the employer or the insured is deposited in common fund and managed by SOCSO. The law therefore must respond and be responsible to be felt and discernable compulsion of circumstances that would be equitable, fair and just and unless there is something to the contrary in the statute, the court must take cognisance of that fact and act accordingly (see *Pomal Kanji Govindji v Verajall Kar Sandas Purohit* AIR 1989 SC 436). Therefore, it is not unreasonable and is a sound rule of construction that the social legislation should be interpreted liberally and be given a purposive interpretation and in such a manner as to render the rights and benefits available under the Act to be effective and meaningful or to provide a meaningful social security to Insureds or their dependants and not to 'put up all sorts of barricades along the path'. Law should keep pace with changing socio economy norms especially if the existing law does not suit the present context or is inadequate (see *MC Mehta v Union of India* AIR 1987 SC 1088).

[15] Learned counsel for the insured had made a great effort to persuade this court to follow the views of His Lordship Kang Hwee Gee J who gave a liberal interpretation to s 24 of the Act in *Ketua Pengarah Pertubuhan Keselamatan Sosial v Mohd Zaili Ali* [2004] 1 MLJ 283; [2003] 6 AMR 288. In *Ketua Pengarah Pertubuhan Keselamatan Sosial v Mohd Zaili bin Ali*, His Lordship Kang Hwee Gee J said:

> But s 24 is amenable to a much wider purposive construction.
>
> To appreciate the scope of s 24(2) of the ESSA 1969, one must be able to appreciate the elementary principle of economics that in the small and medium enterprise, labour (in the present context, the worker) constitutes an important factor of production.
>
> Unlike the entrepreneur (in the present context, the employer) who takes profits for his enterprise, the worker takes remuneration for work performed. His resource must necessarily be limited by the pay he takes home. His well being while being employed has to a limited extent to be provided for by legislation. Hence the ESSA 1969 which provides under s 24(1) a liberal insurance coverage in respect of injuries sustained by the worker in the course of his employment.
>
> It follows therefore the exclusionary provision under s 24(2) of the Act must be subjected to the purposive construction that it deserves in line with the objective to provide the worker with the widest possible insurance coverage of his welfare to ensure continuity of production.
>
> If one were to apply the literal meaning to the words 'interruption of or deviation from the insured person's journey' appearing in s 24(2), a worker would be disqualified from making any claim even if he has to attend to the call of nature some distance from the highway in the course of his journey as he would then be guilty of having interrupted or deviated from his journey an absurdity that could not have been intended by the Legislature.
>
> *Section 24(2) of the Act must therefore be subjected to the purposive interpretation pursuant to s 17A of the Interpretation Acts 1948 and 1967* which provides as follows (Emphasis added.):
>
> > 17A In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.
>
> In my view a worker unlucky enough to meet with an accident while going to or returning from work should be able to make a claim under s 24 even if he had interrupted or deviated from his journey for any reason whatsoever if the objective of his travel is to reach his place of work or to return home from work, provided the deviation or interruption was not made in furtherance of some other economic pursuit distinct and unrelated to his obligation under the contract of employment he had entered into with the employer as for instance he had in the course of the journey made a deviation or interruption to undertake another remunerative part-time work for here it is clear that the worker was under the circumstances

undertaking a distinct and unrelated pursuit that could not have served the interest of his employer to whom he was committed to work for and who in turn had provided for his insurance under the Act.

On the other side of the coin he should be held covered even if he had interrupted his journey home from work to visit a sick relative at the hospital or if he had stopped at the market to purchase provisions for it cannot be gainsaid that the main objective of his journey was to reach home and was not made in furtherance of any other economic pursuit other than the one which he was already committed to with his employer.

Now to revert to the issue in the instant appeal. It would not have mattered that the worker had made a detour to send a co-worker home. He should be able to make the claim given that the objective of his travel was to return home and the deviation or interruption of the journey was not made in furtherance of some other economic pursuit distinct and unrelated to the employment he had committed himself to with the employer.

For the foregoing reasons, the appeal is dismissed with costs.

[16] In *Ketua Pengarah Pertubuhan Keselamatan Sosial v Jusoh bin Abu Bakar* [2002] 7 MLJ 17; [2003] 1 CLJ 283, the facts are poles apart and can be distinguished. the insured left his residence by motorcycle at Telok Ketapang, Kuala Terengganu to go to his rented house at Paka in Dungun in order to change his uniform before he proceeded to his work at the airport Kerteh. On his way to his rented home at Paka, the insured met with an accident. His Lordship Nik Hashim J (now judge of the Federal Court) said that the accident was not an employment injury under s 2(6) of the Act as the insured's Ketapang house was in law, not his place of residence or stay in relation to his place of work for the purpose of s 24(1)(a) of the Act as the place was not the insured's home or base from where he went to work daily. The Ketapang house was his weekend retreat. Therefore, His Lordship Nik Hashim J (now judge of the Federal Court) held that the insured's journey from his residence at Ketapang to his rented house at Paka on that fateful day cannot be considered as if he was travelling on a route between his place of residence or stay and his place of work as his place of residence or stay is not the rented house at Paka.

[17] In *Ketua Pengarah Pertubuhan Keselamatan Sosial v Sathiamorthy a/l Kanason*, (unreported) the facts are also poles apart and can be distinguished. In that case, the insured's work starts from 11pm to 7am. He met with an accident at about 2.30pm and his reason for travelling at 2.30pm was he wanted to work overtime but there was no evidence from his employer to support that on that day he was required to work overtime or was any instruction given for him to work overtime. Accordingly and rightfully, His Lordship, Md Raus Sharif J (now judge of the Court of Appeal) rejected

the insured's claim by allowing the appeal of the SOCSO on the ground that the accident did not arise out of and in the course of his employment. His Lordship said:

> Saya bersetuju dengan tafsiran yang dibuat oleh Hakim Nik Hashim di dalam kes tersebut di atas. Sebenarnya, sama ada kemalangan yang menimpa seseorang yang berinsuran di bawah AKSP tergulung sebagai bencana kerja bergantung kepada fakta sesuatu kes. Di dalam kes ini perayu mengatakan bahawa kemalangan yang menimpa responden berlaku jauh di luar masa responden bertugas. Ini adalah kerana pada tarikh kemalangan itu berlaku, iaitu pada 2 Ogos 1996, responden bertugas pada syif ketiga di antara waktu 11 malam hingga 7 pagi keesokan harinya. Walhal kemalangan berlaku di antara jam lebih kurang 2.30 petang iaitu 8½ jam sebelum waktu bertugas.
>
> Responden pula menyatakan bahawa beliau pergi ke tempat kerjanya untuk membuat kerja lebih masa. Menurutnya walaupun syifnya bermula 11 malam hingga 7 pagi, beliau telah pergi awal untuk membuat kerja lebih masa yang bermula pukul 3 petang hingga 11 malam.
>
> Persoalannya adakah responden pergi ke tempat kerja lebih awal kerana hendak membuat kerja lebih masa. Memandangkan responden memberi alasan sedemikian, maka responden perlulah mengemukakan keterangan untuk menyokong keterangan beliau. Responden gagal berbuat sedemikian. Tetapi, terdapat pula keterangan sebaliknya. Majikan responden, di dalam pernyataan yang telah diterima sebagai keterangan telah menyatakan seperti berikut:
>
> > Pada 2 Ogos 1996, beliau sepatutnya bekerja syif (3). Walau bagaimanapun, beliau katakan mahu datang untuk buat OT. Menurut amalan syarikat, setiap pekerja yang ingin datang buat OT adalah atas arahan penyelia kami sendiri (Encik Zulradzi bin Abdul Karim). Pada 8 Februari 1996 itu, beliau tidak pernah diarah untuk buat kerja OT seperti didakwa oleh beliau. Kami pasti bahawa beliau bekerja syif malam (3).
>
> Dengan keterangan tersebut maka kenyataan responden bahawa beliau datang ke tempat kerja untuk membuat kerja lebih masa sukar untuk diterima. Jadi tujuan perjalanan responden pada hari kemalangan jam 2.30 petang adalah tidak jelas. Pada saya, perjalanan responden pada masa kemalangan itu berlaku tidak berkaitan dengan pekerjaannya kerana beliau tidak diarah untuk bekerja lebih masa. Waktu bekerja ialah 11 malam dan dengan itu tidak munasabah untuk beliau ke tempat kerja dengan begitu awal. Pada saya, atas fakta kes ini, kemalangan yang ditimpa oleh responden tidak tergulung sebagai bencana kerja bagi maksud s 2(6) dan s 24 AKSP.
>
> Atas alasan-alasan di atas, rayuan adalah dibenarkan dengan kos.

[18] In *Ketua Pengarah Pertubuhan Keselamatan Sosial v Rajaparameswari Marimuthu* [2004] 4 CLJ 528 which was referred to in *Ketua Pengarah Pertubuhan Keselamatan Sosial v Tham Tian Siong* [2008] 7 MLJ 854, the facts are also poles apart and can be distinguished. In that case, the insured

met with an accident when she was on the way to go to the bus station to catch her employer's factory bus in order to go to the factory from her daughter's house at Bukit Dumbar. However, the insured's *residential address* was read as Taman Tun Sardon, Gelugor. There was evidence that every weekend, the insured would stay overnight at her daughter's place in Bukit Dumbar and left to work in the morning on Monday. In dismissing the SOCSO's appeal, RK Nathan J held:

> To consider the rationale behind s 24(1)(a) it is necessary therefore to consider the meaning of the two key words in that subsection. They are 'residence' or 'stay'. 'Residence is defined in the *Concise Oxford Dictionary* (9th Ed) as 'a place where a person resides; and abode' and 'reside' is defined as 'have one's home, dwell permanently'. The meaning to be attributed to the word 'residence' in s 24(1)(a) would be to give it a degree of permanency. In other words residence can be described as the permanent or habitual home of a person, for the purposes of this Act.
>
> The word 'stay' is defined in the same dictionary as 'to have temporary residence as a visitor etc, the act or an instance of staying or dwelling in one place', the duration of this (just a ten minute stay; a long stay in London). In other words the words 'stay' is distinct and is opposed to permanency. It connotes a meaning that the person would stop at the place only for a short while. There is no permanency as in residence. It is a temporary stop.
>
> Having now defined both the words it is necessary to relate them to s 24(1)(a) to get the full import of the meaning actually intended by Parliament. It is important to note the word 'OR' between 'residence' and 'stay' in the said subsection and therefore the two words must be read disjunctively. Parliament would certainly have not intended the word 'stay' to have the same meaning as 'residence' as otherwise it would be superfluous and Parliament intends that every word it uses in its Acts must be given its ordinary meaning.
>
> Since 'stay' does not connote a permanent residence and since Parliament did not intend by the use of the word OR for both words to have a similar meaning and since the dictionary defines 'stay' as a temporary abode it is my judgment that on the facts of this case when the insured left her daughter's house, she was in fact traveling on a route between her place of 'stay' and her place of work, that is to the bus station where she would be picked up by the factory bus.
>
> Unlike in the case of *Jusoh bin Abu Bakar* where the insured met with an accident whilst proceeding from his temporary place of stay in Kuala Terengganu to his permanent home in Paka to change before proceeding to Kerteh, the insured in this case was enroute directly from the place of stay to the place of work. In my judgment the chairman of the board was correct in his interpretation of s 24(1)(a). I therefore held that the respondent herein did sustain an employment injury as described by s 2(6) of the Act read together with s 24(1) of the Act. In *Jusoh*'s case the insured was unable to succeed because he deviated to his house at Paka before proceeding to Kerteh. The learned judge did not consider in his judgment what the position would have been if Jusoh had gone directly from Kuala Terengganu to Kerteh.

[19] In order to succeed under this Act for disablement benefit or dependants' benefit, it cannot be disputed that the accident must 'arise out of and in the course of his employment' and these two conditions are the key to s 24 of the Act. In other words, both the conditions must be satisfied. The words 'in the course of his employment' must necessarily mean 'in the course of his work' which the workman is employed to do and includes some risks incidental to the duty of the service (see *Mackinnon Mackenzie & Co (P) Ltd v IM Issak* [1970] 2 Lab IC 1413). There is no requirement that the insured or a workman should be engaged in some positive activity at the time of the accident so long as the accident happened when the workman or insured was doing something related or incidental to his work (see *MC Shantamalar PPA v MD Chandarappa Chetti* AIR 1951 Mys 116). An injury received within reasonable limit of time and space, for instance in cases where the workman or insured meets with an accident while in the act of 'satisfying thirst or satisfying his bodily needs in the use of food, drink or even tobacco is to be regarded as an employment injury', ie 'injury was received in the course of his employment' (see *PEP Davies & Co v Kestorouth* AIR 1968 Cal 129). In the instant appeal, the insured left his place of work at about 6.15pm and within a short period met with an accident at about 6.30pm and within the distance of 3km from his place of work when he went to have his food with prior permission of his employer.

[20] In *Assam Railway and Trading Co v Saraswati Devi* AIR 1963 Ass 127(FB), which was a claim under the law relating to Workmen's Compensation Act, the question was, whether the accident 'arose out of the employment' and it was held, it will depend on the facts of each case and it laid down the following tests for determining whether the accident 'arose out of employment':

(i) the workman was in fact employed on or performing the duties of his employment at the time of the accident;

(ii) the accident occurred at or about the place where he was performing these duties, or where the performance of these duties required him to be present; and

(iii) the immediate act which led to or resulted in the accident had some form of causal relation with the performance of these duties and such causal connection could be held to exist if the immediate act which led to the accident is not so remote from the sphere of his duties or the performance hereof, as to be regarded as something foreign to them (see *Trustees, Port Bombay v Yamunabai* AIR 1952 Bom 382; *St Helens Colliery Co Ltd v Hewitson* [1924] AC 59).

[21] In *Weaver Tredegar Iron & Coal Co* [1940] 3 All ER 157, the House of Lords gave the broad meaning to the word 'course of employment' and observed:

> if duty be construed with … sufficient width, it may be a decisive test, but so construed, to say, that the man was doing his duty means no more than that he was acting within the scope of his employment. The man's work does not consist solely on the task which he is employ to perform. It includes also matters incidental to that task. Times during which meals are taken, moments during which the man is proceeding towards his work from one portion of his employer's premises to another, and period of rests may all be included. Nor is his work necessarily confined to his employer's premises … The question is not, I think, whether the man was on the employer's premises It is rather whether he was within the sphere or area of his employment.

[22] The disablement benefit is available to an insured suffering from disablement as a result of employment injury under the Act. Section 2(6) of the Act defines employment injury as:

> a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment in an industry to which this Act applies;

[23] However, the scope of the term 'arising out of and in the course of his employment' would not cover a situation where the insured or the workmen:

(i) at the time of the accident was acting in contravention of the provision of any law applicable to him; 'or'

(ii) the insured was acting in contravention of any orders given by or on behalf of his employer 'or'

(iii) that the insured was acting without instruction from his employer.

[24] In *Reed v Western Railway Co* [1908] AC 31, there was a claim by the family of the deceased under the Workmen's Compensation Act. The deceased, an engine driver in charge of the engine in breach of his duties left the engine and crossed the railway line for a purpose of his own in order to receive a book from a friend. On returning to his engine, he was killed by a wagon which was being stunted on the siding. The House of Lords held that the deceased left the engine for a purpose of his own and not in the execution of his duty or in the interest of his employer to cross a siding. Therefore, the accident did not arise out of and in the course of his employment. In fact, in that case, the deceased had been warned against doing the very thing which he had ventured to do. In another word, there was a breach or deviation from his duty or willful disobedience or deliberate incurring of danger unlike in the instant appeal where the insured had left his place of work with the prior permission of his employer to have his food. It cannot be denied that it is for the insured to make out that the accident in respect of which the disability

benefit which is claimed arose out of and in the course of his employment' and not upon the employer to prove to the contrary.

[25] However, in the instant appeal, there is no dispute that the insured had left his place of work with the prior permission and consent of his employer where he was allowed to go to go to have his food. There is also evidence before the board that the insured had left early with the permission of his employer to have his food and he was to return to work at Block 94-B as instructed by his employer at the time when the permission was granted to the insured to leave early to have his food. The version is supported by the employer and a co-worker.

[26] As for the submission of learned counsel for the SOCSO that the contradiction between the insured's statement to the SOCSO and his police report when compared to his testimony before the board, this court is of the considered view that it must be regarded as one of fact and is not a substantial question of law as s 91(2) of the Act and reg 17(1) of the 1976 Regulations expressly state that there must be a 'substantial question of law' for the appeal to be brought to the High Court. In fact, the provision of law relating to evidence is not permitted to be applied to the proceeding before the board. Regulation 11(g) of the 1976 Regulations states that:

> Subject to the provisions of the Act and these regulations, the following practice and procedure shall apply in relation to the hearing of an application by the Board:
>
> (g) the provisions of law relating to evidence shall not apply to proceedings before the Board;

[27] In any event, this court finds that the insured has explained the alleged omission and his explanation has been supported by his employer. On the other hand, it cannot be ruled out that a father being the employer in the instant appeal would no doubt assist the insured to successfully receive the benefit under the Act for the injuries he has suffered. Nevertheless, the fact that the employer is the father of the insured does not necessarily mean that his evidence should not be accepted on the ground that it is more likely that he would support his son. In fact, under cross-examination in the proceeding at the board, learned counsel for the SOCSO had elicited evidence through the employer who had agreed that the purpose of granting the permission was for the insured and the co-workers to have a drink and then to return to work at Block 94-B. The employer had testified:

> Saya setuju adalah tujuan perayu dan rakan-rakan sekerjanya untuk minum and lepas itu buat kerja di blok 94-B.

Further, the employer had also testified that the workers were given permission to buy food and to return at anytime with his permission. The employer had testified:

> Tidak ada waktu rehat, mereka dibenar untuk beli makanan dan balik bila-bila masa dengan kebenaran saya.

This court also finds there was no challenge during made the cross-examination at the board that both the employer and the insured had fabricated their evidence by testifying that the insured had intended to return to work after having his food or of any non-disclosure of material facts. The only relevant suggestion that was put was that the evidence at the board proceeding, was an afterthought. It is important to state that in the SOCSO's board proceeding, there was also no suggestion put to the insured during cross-examination to contradict him (see *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen and another appeal* [1995] 2 MLJ 770 at p 749). However, this court is of the considered view that if it is found that the insured had obtained permission from his employer to leave early for home and if on his journey home, he had turned right to have his food at the stall instead of turning left to return home and the accident had occurred, this fact alone should not disentitle the insured to claim the benefits under the Act as it should be covered by s 24 of the Act as the purpose and object of this legislation is to provide immediate monetary benefits to insured-person who become disable and not to deny him of his claim or benefit (see *Liang Jee Keng v Yik Kee Restaurant Sdn Bhd* [1991] 3 MLJ 178). Forgetfulness, omission or failure to recall certain events in detail by a witness as in the situation of the insured who had sustained injuries and become disable and was not conversant with the language or could not express himself well and in detail to the SOCSO's officer, does not necessarily shake the credibility of the witness or render other part of his evidence unworthy of belief. Nevertheless, it is desirable that in cases where the insured is unable to express clearly in the language that is spoken by the SOCSO's officer, an interpreter be provided so that the claim form will contain the full details of the facts prior to the accident. In order to achieve the purpose and object of this social legislation, this court wish to reiterate that the provision of s 24(1) and (2) of the Act calls for a purposive interpretation, flexibility of approach and not a restrictive approach and it would be undesirable to lay down any proposition which could be applied to all situation of cases or to lay down any exhaustive interpretation. On the other hand, the rule of adherence to precedent of coordinate jurisdiction though ought not to be abandoned, ought to be in some degree relaxed, especially when it is found to be inconsistent with the sense of justice or with the social welfare or with the object of the social security legislation.

[28] Be that as it may, this court is not concerned or moved by any other consideration other than determining the issue revolved strictly and within the provision of s 24 of the Act and the law and that there must always be judicial fairness. Fairness is a flexible concept whose content is dependant on the factual situation which is under consideration as in the instant appeal. In the instant appeal, what is fair in relation to a particular process and to a particular situation which is the subject matter to that process is a matter entirely for the determination of the appellate board (see *R v Monopolies & Mergers Commission, Ex Parte Elders IXL Ltd* [1987] 1 All ER 451 at pp 461–462). In the instant appeal, it is worth reminding ourselves that in defining or interpreting the particular provision of s 24 of the Act, the test is not absolute and this court has to come to a fair and reasonable decision based on the materials There must be room for a flexible approach and a liberal interpretation to s 24(1) of the Act depending on the facts and circumstances of each case so as to produce a sensible meaning which will give a practical and meaningful effect and not to be practically unjust. Based on both oral and documentary evidence which was placed before the board, the board had considered the totality of the evidence produced by both parties and had made a findings that the insured was given permission to leave early to have his meals and that if on his way home, he had to stop to have his food, and if along the journey he had met with accident, he is still covered by the Act as it 'arose out of and in the course of his employment'. This social legislation protect employees of almost all private sectors against contingencies of industrial accident or occupational disease 'arising out of and in the course of his employment' and disablement or death due to whatever cause and provides monetary assistance or benefit through the Act of the compulsory social insurance scheme and this court or SOCSO itself should not frustrate or deprive insureds or their dependants of their benefit by giving a narrow or restrictive interpretation to s 24 of the Act unless there is evidence of any kind of fraudulent claims which is not the case in the instant appeal. Nevertheless, it is important to stress that the thrust behind the social legislation must have been intended to give a quick relief to insureds in case of disablement or to the family members in case of death and each case is to be decided on its own set of facts Therefore, it is impossible to give any general or judicial guidance to cover every case. As such the board must be given the liberty to give a liberal interpretation to s 24 of the Act to do justice.

[29] In the instant appeal, as stated above, there is no evidence of any breach or disobedience by the insured of the terms of the contract of employment or of any specific instructions given by his employer to justify rejection of the claim. This court finds that the provision of s 24 of the Act states that an accident happening to an insured *shall be deemed to arise out of and in the course of employment* and this expression must be given a liberal interpretation and does not necessarily mean or is confined or restricted to accidents happening only during the currency of the employment. In the

circumstances, this court is in agreement and echo that the scope of the provision in s 24(1) should be given a wider or liberal interpretation to this Social Security Legislation as was held by His Lordship Kang Hwee Gee J in *Ketua Pengarah Pertubuhan Keselamatan Sosial v Mohd Zaili bin Ali* [2004] 1 MLJ 283; [2003] 6 AMR 288.

In fact, there are three different situations referred to in s 24(1) of the Act, ie *while the insured person*:

(a) is traveling on a route between his place of residence or stay and his place of work;

(b) is traveling on a journey made for any reason which is directly connected to his employment; or

(c) is traveling on a journey between his place of work and the place where he takes his meal during any authorised recess.

[30] In the instant appeal, based on the materials produced at the board, it is regrettable to note that both learned counsel for the SOCSO and the insured have confined or limited their arguments only to s 24(1)(c) read with sub-s (2) without giving any consideration to s 24(1)(b). Even assuming that the insured had obtained permission from his employer to leave for home early as he was hungry to have his food and while on his journey home he had turned right to have his food at a stall and the accident had occurred, it would have made no difference or could not be considered as an interruption or deviation from the insured's journey to reach home as the accident would still 'arise out of and in the course of his employment' as his ultimate purpose was to reach home. In any event, there is evidence before the board that, *first*, the employer had informed the insured when giving permission to leave early to have his food and that he must complete his job at Block 94-B and this version is supported by his employer and the co-worker. *Secondly*, there is evidence that the route the insured took to have his food at the stall is also the same route to proceed to Block 94-B. *Thirdly*, there is no evidence that the insured had informed anyone that he was returning home early or his job has been completed for the day or is there any record to show that he was returning home after his work. In any case and regrettably, the learned chairman seemed to have also confined her decision to s 24(1)(c) and had restricted her finding without considering the overall situation and instead had held that there was no necessity for the insured to return to work after having his food due to the time factor as, if the insured had to return to work after spending time to have his food, it would have passed the working hours. On that score, the learned chairman found that the insured was given permission to return early on that day although she had relied on s 24(1)(c) of the Act. In fact, the learned chairman ought to have proceeded a step further and considered whether there was sufficient evidence to draw an inference or finding that when considering the evidence of the employer and

the co-worker that the insured was to return to work at Block 94-B after having his food and under those circumstances, it would still cover the insured under s 24(1)(c) of the Act. Nevertheless, even if the reasoning of the learned chairman was not satisfactory or in detail, she had not erred in law in her decision to find for the insured.

[31] Further, even in a case where a workman who was on his journey home meets with an accident when he turned to a sideline or took a different route to have his drinks or refresh himself or due to call of nature, he should not be treated differently to exclude him of the benefit under the Act as with respect, it should be regarded as 'arising out of and in the course of his employment' by giving the wider approach and liberal interpretation in order to keep with the spirit and object of this social legislation and to give meaningful and practical effect to the same and in accordance with reason and justice. In that situation, the accident could not be excluded by sub-s (2) and there is no just cause or excuse to reject his claim (see *Ketua Pengarah Pertubuhan Keselamatan Sosial v Tham Tian Siong* [2008] 7 MLJ 854). In *Ketua Pengarah Pertubuhan Keselamatan Sosial v Tham Tian Siong*, His Lordship Hamid Sultan JC said at p 866:

> It is incumbent upon an employee to travel from his home to the work place and from the work place to his home. It is my judgment that such commuting will fall within the phrase 'connected'. During such commuting some deviation to have a cup of tea or to buy some grocery or to stop at a friend's house does not necessarily mean that it is not directly connected to the employment. It all depends on the facts And where there is a dispute it is for the board to make a finding. I do not think that such facts which have to be determined by the board can ordinarily be a subject matter of an appeal, by the appellant though any decision of the board can be questioned by the respondent provided it can satisfy the criteria set out in r 17 of the SSR 1976. As a general rule it will be sufficient for the appellant when challenging the decision of a tribunal to satisfy the court that the tribunal has dealt with the wrong questions or has taken into account irrelevant considerations or has misconstrued the terms of any relevant statute, or has misapplied or misstated a principle of the general law (see *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers Union* [1995] 2 MLJ 317). However, SSR 1976 places a higher burden on the appellant in that he must satisfy the court at the commencement of the proceedings that it involves substantial question of law to justify the hearing of the appeal.
>
> For reasons stated above, I dismiss the appellants' appeal with costs.

[32] It is important to reiterate that in the instant appeal, the insured had obtained permission from his employer to leave early to have his food and while on his journey to the restaurant or stall and within a short time, he had met with the accident. There is no evidence that the insured should not absent himself from his work to procure refreshment or nourishment or to have his food when the necessity of human nature thereby required that he

should do so. He did not leave his place of work to carry out an unauthorised enterprise. The evidence did not demonstrate that there was any breach of the terms of the contract or disobedience of his employer's instructions. In fact, this is a clear case of the employer having given permission to the insured in the presence of the co-workers for the insured to leave early to have his food as he was hungry and he was to return to work. Therefore, his benefit under the Act cannot be excluded as a deviation when the insured had turned right to have his food as this would tantamount to frustrating the purpose and object of this social legislation.

[33] On the other hand, if the insured had obtained permission from his employer to leave his place of work early to have his food with a view to return home, it cannot also be said that the accident is excluded by sub-s (2) to s 24 of the Act as it need not necessarily mean there was an interruption or deviation of the terms of the employment in order to disentitle him to the benefit under the Act. It would be a different situation or scenario in a case where a domestic servant who sleeps and take her meals in her employer's house as she is in the course of service all the time to take her meals on the employer's premises being there at meal times but however if she goes out on her own business or pleasure, her service would be deemed to have interrupted and she may not be able to claim the benefit under the Act if she meets with an accident. This court is of the considered view that SOCSO cannot alter the broad principle which should be applied where leeway is given or there is no restriction to an employee to either have a break to have his meal outside his place of work and return to work or have his meals or refreshment on his journey home after his work. In both the situations ie whether the insured had obtained permission of his employer to have his meal outside and has to return to work or had his meal on his journey home should be considered and accepted as being incidental to his work or service and arising out of and in the course of his employment.

[34] In *Blovelt v Sawyer* [1904] 1 KB 271, a workman during the midday dinner hour was at liberty to stay and take his meal on the premises or to go elsewhere. He elected to stay on the premises and sat down to eat his dinner. There was no canteen provided when the wall fell upon him and he was injured. It was argued that there was no break in the employment of the workman; he was entitled to claim compensation. Sir Richard Henn Collins MR said at p 274:

> It seems to me that, notwithstanding what is alleged as to the payment being for the hours in which the applicant was actually engaged in work and not for the time in which he took his meals, *we must take a broader view, and treat him as continuing in the employment of the master by the consent of the master, inasmuch as it is for the master's advantage that the workmen should have an opportunity to feed themselves. A workman would do his work all the better by taking his meal at the time, and if it*

is part of the contract between him and his master that he may do so upon the works instead of going away, that may be a matter of mutual convenience. A man might, for instance, live at a distance, and it might be desirable from the master's point of view, that he should not tire himself by going to and fro for his food instead of reserving his strength for his work. It does not seem to me that, as a matter of law, it can be said that, when sitting down to his dinner, the applicant had ceased to be in his master's employment. From the mere facts that he was not paid for this particular time and that he was not engaged in the main purpose of his work it cannot, as a matter of law, be said that he had ceased to be in the employment of his master.

(Emphasis added.)

In *Brice v Edward Lloyd Ltd* [1909] 2 KB 804, Farwell LJ at p 30 said:

I think a workman's employment is not confined to the actual work upon which he is engaged, but extends to those actions which by the terms of his employment he is entitled to take or where by the terms of his employment he is taking his meals on the employer's premises (see *General Manager v Mrs Agnes* AIR 1964 SC 193; *Ketua Pengarah Pertubuhan Keselamatan Sosial v Tham Tian Siong* [2008] 7 MLJ 854).

The meaning of the words 'in the course of the employment' has been determined in the House of Lords in the case of *Davidson (Charles R) & Co v M'Robb or Officer*. *In the course of employment does not mean during the currency of the engagement, but means in the course of work which the workman is employed to do and what is incident to it. I think that a mid-day meal is incidental to an employment such as that of the respondent, which commenced at six in the morning, and that the taking of such a meal does not in itself, and apart from special circumstances, create an interruption in the course of her employment, There are no special circumstances in the present case such as, for instance, arise when an employee is away from his work not in the course of employment but for his own pleasure or business*. In the case of *Davidson (Charles R) & Co v M'Robb or Officer*, Lord Dunedin said referring to course of employment. *It connotes, to my mind, the idea that the workman or servant is doing something which is part of his service to his employer or master. No doubt it need not be actual work, but it must, I think, be work, or the natural incidents connected with the class of work; eg on the workman's case the taking of meals during the hours of labour*.

(Emphasis added.)

[35] In the circumstances, this court finds that the learned chairman had not erred in law in interpreting s 24(1)(c) of the Act in favour of the insured as that was the understanding between the employer and the insured that he was granted permission to leave early to have his food and to return to work. The SOCSO has not been able to demonstrate that there is any error in law in the interpretation of s 24(1) of the Act. The question of the insured having omitted to give detail account to the SOCSO's officer is a question of fact and not law as it merely relates to the weight to be given to the evidence of the insured for this omission due to inadvertence. This court therefore ought not

to interfere with the findings of fact, for reason that SOCSO as the appellant is permitted to appeal to this court only if it involves a substantial question of law as provided under s 91(2) of the Act and reg 17(1) of the 1976 Regulations.

[36] This court therefore is in agreement with the submission of learned counsel for the insured that the accident in the instant appeal 'arose out of and in the course of the employment' of the insured. There is no error of law for this court to interfere with the decision of the board. Accordingly, the appeal is dismissed with costs.

Appeal dismissed with costs.

Reported by K Nesan